

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-57-EC - ORDER NO. 2003-358
JUNE 13, 2003

IN RE: Mr. and Mrs. James Tarmann,)	ORDER RULING
)	ON COMPLAINT
Complainant,)	
)	
vs.)	
)	
Duke Power, BellSouth, and the)	
Public Service Commission Staff,)	
)	
Respondents.)	

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Complaint from James and Patricia Tarmann (the Tarmanns) against BellSouth Telecommunications, Inc. (BellSouth), Duke Power Company (Duke) and the Public Service Commission Staff (Staff). A hearing was held on April 10, 2003 at 10:30 a.m., at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Mignon Clyburn, presided. The Tarmanns appeared pro se. Duke Power was represented by Richard L. Whitt, Esquire and Kodwo Ghartey-Tagoe, Esquire. William F. Austin, Esquire and Jeanne J. Brooker, Esquire, represented BellSouth. The Staff was represented by Jocelyn G. Boyd, Staff Counsel.

At the hearing, the Tarmanns presented testimony regarding their complaints against the Respondents. Barbara Yarbrough and Timothy L. Cassell testified on behalf

of Duke. Charner L. Wofford, Jr. and Robert Martin presented testimony on behalf of BellSouth. Lynn E. Mathis, P.E. testified on behalf of BellSouth and Duke. April Sharpe, Eddie Coates, Gary E. Walsh, and David Butler, Esquire, testified on behalf of the Staff.

II. SUMMARY OF TESTIMONY

Mr. Tarmann testified that he receives electric service from Duke and telephone service from BellSouth, at his residence. Further, Mr. Tarmann stated that electric and telephone service did not exist at his property when it was purchased. Instead, all of the utilities had to be brought up from the public road. The former property owners provided an easement from the public road to the Tarmanns' property. In his testimony, Mr. Tarmann alleges that he placed numerous calls to the BellSouth 611 service. Then, in 2001, Mr. Tarmann testified that BellSouth cut a main power supply to his house and the bottom of the electric pedestal had been gouged out. BellSouth and Mr. Tarmann did discuss the cut lines and appropriate damages, however, as of the day of the hearing, this issue had not been resolved.

According to Mr. Tarmann, he has also had problems with the installation and placement of his electric service. Mr. Tarmann complained about the placement of the underground lines for his electric service. According to Mr. Tarmann, the trench that the lines were in on the easement washed out and the high voltage lines became exposed. Next, Mr. Tarmann testified that he was concerned about the safety of exposed high voltage lines on the easement leading to his home. Mr. Tarmann testified further that

Duke attempted to fill the trench a couple of times; however, the trench was never returned to its original state. Additionally, Mr. Tarmann claimed that he never received the benefit from Duke's rebate program which he claims he was entitled to when he purchased his home. Mr. Tarmann testified that he has been trying to obtain the rebate or documentation on the program for the last six years.

Regarding his complaint against the Commission Staff, Mr. Tarmann alleged that the Staff did not adequately assist him with his Complaint. Mr. Tarmann also testified that he felt Staff did not care about resolving his Complaint. Finally, Mr. Tarmann enumerated several regulations that he thought had been violated and his reasons for believing that the Respondents had not abided by the regulations.

Mrs. Tarmann's testimony reveals her complaints about the Respondents were very similar to her husband Mr. Tarmann. In May 1996, Mrs. Tarmann alleges that she was electrocuted by a stake that BellSouth had installed under her window. BellSouth, according to Mrs. Tarmann, reimbursed her for the property damage and her medical expenses, along with a small settlement. Mrs. Tarmann also complained about a main power supply to her home being severed. According to her testimony, Mrs. Tarmann states that she has not resolved this issue with BellSouth. Additionally, Mrs. Tarmann complained about exposed electrical lines. Mrs. Tarmann testified that Duke never fully covered the exposed lines or attempted to repair the damage to the easement that had occurred. To remedy the problem of exposed lines, Mrs. Tarmann suggested that Duke either cover the buried lines and repair the damage to the easement or move the service to overhead, and repair the damage to the easement.

Mrs. Tarmann also complained about not receiving Duke rebates after purchasing a Duke Energy rated home. Further, Mrs. Tarmann alleged that her requests to receive information about the Duke rebates has not been fulfilled for approximately six years. Mrs. Tarmann also alleged the Staff did not do any type of investigation. In essence, Mrs. Tarmann was unsatisfied with the Staff's involvement in this case. Mrs. Tarmann also cited several Commission regulations that she felt have been violated by the Respondents and her reasoning for having those beliefs.

Barbara Yarbrough, Regulatory Interface for Duke, testified that she was familiar with the complaint regarding installation of electric service to the Tarmann's home. Ms. Yarbrough testified that Duke determined that underground service was the most feasible way to provide service to the Tarmann's home due to the large number of trees that would have to be cut to provide overhead service. Thereafter, Duke installed an underground primary line along the road in the easement for ingress and egress. Ms. Yarbrough testified that the Tarmanns contacted Duke on October 1, 1997, indicating that Duke's underground electric line was exposed. Duke investigated the exposed lines, according to Ms. Yarbrough, however Duke's records indicate the insulated line was visible but was not cut. Ms. Yarbrough testified that Duke's records indicate repairs were made to recover the cable.

On another occasion, on October 2, 1998, representatives of Duke and BellSouth met at the Tarmann residence to investigate exposed cable. According to the record, Duke's records show that the parties agreed that the washed-out trench may have been due, in part, to BellSouth having installed their cable in Duke's trench which could have

possibly been better tamped, and the wash-out occurred as a result of natural water erosion on the property, after it was cleared. A representative from Duke informed the Tarmanns that Duke's cable was buried at the proper depth, and that the visible cable belonged to BellSouth. When Ms. Yarbrough visited the Tarmann property on February 27, 2002, she did not find any of Duke's electrical wires exposed. On December 17, 1998, and January 8, 1999, Duke made some repairs to de-energized cables near the back of the Tarmann residence.

Regarding the Tarmann's complaints concerning Duke's rebate program for manufactured homes, Ms. Yarbrough testified that these programs no longer exist. According to Ms. Yarbrough's testimony, the Tarmanns' home did not qualify for the rebate programs even when the programs were in existence. According to Ms. Yarbrough's testimony and Duke's records, the Tarmann residence is equipped with gas heat and gas water, thus making the home ineligible for the rebate.

Timothy Cassell, Distribution Engineer Associate III for Duke, presented testimony regarding Duke's electrical installation at the Tarmann's property. According to Mr. Cassell, the National Electrical Safety Code requires that primary voltage facilities be buried 30" deep and secondary facilities 24" deep. When Mr. Cassell visited the Tarmann's property, he testified that he observed that Duke's electrical facilities were constructed and installed correctly and in a safe manner.

Mr. Charner Wofford, BellSouth's Claims Manager for the Upstate of South Carolina, presented testimony concerning claims that the Tarmanns have made against BellSouth and BellSouth's responses to these claims. The first complaint Mr. Wofford

addressed concerns Mrs. Tarmann's claim for personal injury and property damage from a telephone stake being placed too close to an electrical service line on the Tarmanns' property. According to Mr. Wofford's testimony, the Tarmanns executed a General and Absolute Release of this claim on July 1, 1996. Mr. Wofford testified that the only other claim against BellSouth from the Tarmanns occurred in May 2001, when Mr. Tarmann alleged that the electrical line to his house had been cut. Although BellSouth sent a \$400.00 check to Mr. Tarmann and a release to be signed, Mr. Wofford testified that BellSouth was unaware until the initiation of this proceeding that Mr. Tarmann had not negotiated the check nor signed the release.

Mr. Robert J. Martin, Design Specialist for BellSouth filed testimony to explain the joint exhibit filed with Ms. Yarbrough's supplemental testimony, Yarbrough Exhibit 10. Mr. Martin testified that he reviewed the Tarmanns' Exhibit 7 in this docket and he visited the Tarmanns' property on August 23, 2002. Mr. Martin testified regarding the inconsistencies he discovered between the Tarmanns' Exhibit 7 and his observations during his visit at the Tarmanns' residence. Mr. Martin noted that, in his opinion, the Tarmanns' Exhibit 7 does not clearly depict the location of BellSouth's phone lines, Duke's electrical service lines, and the Tarmann's own electrical, water and gas lines on the property. Therefore, Mr. Martin explained that the joint map (Yarbrough Exhibit 10) reflects his personal knowledge obtained during his August 23, 2002, visit.

Mr. Lynn E. Mathis, who presented testimony on behalf of BellSouth and Duke, is employed by Framatome ANP DE&S as a Senior Engineer in the Facilities Planning and Siting Department. Mr. Mathis presented expert testimony on the issue of erosion at

the Tarmanns' property. The testimony reveals that Mr. Mathis visited the Tarmanns' property on June 12, 2002. According to his testimony, Mr. Mathis found the condition of the access drive to be in poor condition, very lightly graveled in some places, with moderate to severe erosion along both edges of the drive. Mr. Mathis testified further that he saw very little evidence of erosion control and/or long term stabilization efforts that might have been applied to the drive/road. Additionally, Mr. Mathis stated that all areas that were not forested appeared to be poorly vegetated, which also would contribute to higher storm water runoff conditions. Mr. Mathis concluded by stating that he felt that the underground utility installation of Duke and BellSouth did not cause the erosion problems associated with the drive. However, Mr. Mathis opined that the buried utility cables would probably continue to be exposed due to erosion under current site conditions.

April Sharpe, Manager of the Consumer Services Department of the Commission, testified that Mr. Tarmann filed a verbal complaint with the Staff against BellSouth and Duke on September 25, 1998. On December 1, 1998, Staff met with Duke and BellSouth's representatives and the Tarmanns to conduct an on-site inspection for exposed underground service lines. Thereafter, the Complaint was escalated from verbal to written when Mr. Tarmann filed a letter with the Staff indicating his complaint issues. On April 1, 1999, Ms. Sharpe sent a letter to the Tarmanns informing the couple of the Staff's findings regarding the Tarmanns' Complaint and informing the couple of their right to request a formal hearing. One year and four months later, September 1, 2000, Mr. Tarmann sent an email regarding his 1998 Complaint. The record reveals that the

Staff replied to Mr. Tarmann by email, reiterating Staff's findings regarding the Staff's investigation of the Complaint and informing Mr. Tarmann again of his right to request a formal hearing. Ms. Sharpe also testified that on February 11, 2002, the Commission received a letter from the Tarmanns requesting a formal hearing.

Mr. Eddie Coates, Rates Analyst in the Utilities Department of the Commission, presented testimony regarding his findings as a result of on-site inspections that he performed at the Tarmann residence on December 1, 1998, March 13, 2002, and June 14, 2002. Regarding his visit to the Tarmanns' property on December 1, 1998, Mr. Coates testified that he observed some exposed cable in some areas that could have been caused by heavy rains. Mr. Coates testified that when he visited the Tarmanns' property on March 13, 2002, the Tarmanns' property was in somewhat better condition than his previous visit in December 1998. In March 2002, Mr. Coates did not observe any exposed cable. Mr. Coates testified however that he did not traverse beyond a "No Trespassing" sign on the Tarmanns' property. Thereafter, on June 14, 2002, Mr. Coates testified that he observed telephone cable exposed in four different places. However, Mr. Coates stated that most of the exposed cable that he observed on June 14, 2002, was located in the vicinity of the "No Trespassing" sign.

Mr. Gary Walsh, Executive Director of the Commission, also presented testimony regarding his communications with the Tarmanns. After meeting with members of the Consumer Services Department on the morning of June 22, 2001, Mr. Walsh contacted Mr. Tarmann regarding his then pending Complaint. According to Mr. Walsh, he spoke to Mr. Tarmann on June 22, 2001, via telephone, and Mr. Walsh offered to assist Mr.

Tarmann in resolving his Complaint. Mr. Walsh testified that during his conversation with Mr. Tarmann, he indicated to Mr. Tarmann that the underground facilities might be placed overhead in the eroded areas. The record reveals that Mr. Tarmann stated that it was too late in the process for Mr. Walsh to provide any assistance and that Mr. Tarmann had decided to relocate his family, according to Mr. Walsh's testimony.

Mr. F. David Butler, General Counsel of the Commission, presented testimony regarding the intent of his letter dated August 2, 2001, addressed to the Tarmanns. Regarding Mrs. Tarmann's allegation that Mr. Butler suggested that the Tarmanns were seeking monetary gain in this case, Mr. Butler testified that he never intended to insult the Tarmanns. Mr. Butler testified that he wrote a letter to Mr. Tarmann on August 2, 2001, as a letter of transmittal to forward copies of various requested materials from the companies related to the Tarmanns' Complaint. In his letter, Mr. Butler also discussed Mr. Tarmann's interpretation of a regulation and some negotiations that had been discussed with the Executive Director of the Commission. Mr. Butler testified that his review of the file in the instant docket revealed an email from the Tarmanns that referred to the Tarmanns lost over \$16,000.00 in damages and some other materials involving monetary claims against the companies. Mr. Butler reiterated that he intended to inform the Tarmanns that the Commission had no authority to award monetary damages for any claims.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Tarmanns are residents of Travelers Rest, South Carolina who receive electrical service from Duke and telephone service from BellSouth.

2. The electrical and telephone lines servicing the Tarmann property are installed underground along the road in the easement for ingress and egress.

3. The record reveals that at some point between October 1997 and April 10, 2003, the underground electrical and telephone lines, which are located along the easement, became exposed.

4. The record reveals that an erosion problem does exist along the easement where the electrical and telephone lines are servicing the Tarmann residence.

5. The Commission holds that BellSouth has a responsibility to maintain the telephone lines that service the Tarmann property. 26 S.C. Code Ann. Regs. 103-630, 103-640 and 103-644.

6. The Commission holds that Duke has a responsibility to maintain the electrical lines that service the Tarmann property. 26 S.C. Code Ann. Regs. 103-391, 103-360 and 103-347.

7. The Commission holds that Duke and BellSouth shall put their cables servicing the Tarmann property overhead, at their expense. Or in the alternative, the Commission holds that Duke and BellSouth, at their own expense, shall institute necessary construction or erosion control techniques to correct and maintain the immediate area of the roadway and surrounding right-of-way under which the cables are located to maintain these lines at their required depth.

8. The Commission holds that the initial placement and occasional exposure of some portions of the electrical and telephone cables due to erosion is a maintenance issue, not a safety or construction issue.

9. The Commission holds that all the other allegations and issues raised in the Tarmanns' testimonies as to Duke, BellSouth, and the Staff are dismissed on the basis that the record fails to establish any merit to these claims, or that the Commission lacks jurisdiction to provide the relief requested by the Tarmanns.

10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Mignon L. Clyburn
Chairman

ATTEST:

Gary E. Walsh
Executive Director

(SEAL)